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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,)
4) Case No. 1:23-MJ-166
5 Plaintiff,) (JLS) (JJM)
6)
7 vs.) December 12th, 2023
8)
9 SCOTT J. BARNES,)
10)
11 Defendant.)
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TRANSCRIPT OF BAIL HEARING
BEFORE THE HONORABLE JEREMIAH J. MCCARTHY
UNITED STATES MAGISTRATE JUDGE

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12 APPEARANCES:

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34 Proceedings recorded with electronic sound recording,
35 transcript prepared with computer-aided transcription.

09:35AM 1 THE CLERK: This is United States v. Scott J. Barnes,
09:35AM 2 docket number 23-MJ-166. This is the attorney assignment
09:35AM 3 hearing and detention hearing. Assistant United States
09:35AM 4 Attorneys Joseph Tripi, Nicholas Cooper, appearing on behalf
09:36AM 5 of the government. David B. Cotter appearing with defendant
09:36AM 6 and United States Probation Officer Andre McCray.

09:36AM 7 THE COURT: Good afternoon.

09:36AM 8 MR. COOPER: Good afternoon, Your Honor.

09:36AM 9 THE COURT: Mr. Cotter, you have been assigned to
09:36AM 10 represent Mr. Barnes as a member of the Criminal Justice Act
09:36AM 11 panel of attorneys, and I thank you for accepting that
09:36AM 12 assignment.

09:36AM 13 MR. COTTER: I am happy to accept it, Judge.

09:36AM 14 THE COURT: We're here for the detention hearing.
09:36AM 15 Are we ready to proceed?

09:36AM 16 MR. COTTER: The defense is ready, Judge.

09:36AM 17 MR. COOPER: Government is ready, Your Honor.

09:36AM 18 THE COURT: All right.

09:36AM 19 MR. COOPER: Your Honor, before Mr. Barnes' case was
09:37AM 20 called, we ran a detention hearing in *United States v. Joseph*
09:37AM 21 *Ermin*. Mr. Tripi proffered information to the Court and I was
09:37AM 22 aware that Mr. Cotter was present in the courtroom during that
09:37AM 23 detention proceeding. I spoke with Mr. Cotter before Your
09:37AM 24 Honor came onto the bench just now and informed him that it
09:37AM 25 was my intention to request that the Court incorporate by

09:37AM 1 reference the proffer given and the exhibits introduced by
09:37AM 2 Mr. Tripi in that related case in the detention hearing. It's
09:37AM 3 my expectation that Mr. Cotter has no objection to
09:37AM 4 incorporating that into the record here to avoid re --
09:37AM 5 essentially, revisiting all the same information that
09:38AM 6 Mr. Tripi just provided the Court. Is the Court okay with
09:38AM 7 that?

09:38AM 8 THE COURT: Did you say Mr. Cotter indicated he has
09:38AM 9 no objection?

09:38AM 10 MR. COOPER: I don't believe he's going to object,
09:38AM 11 but, obviously, he can speak for himself.

09:38AM 12 MR. COTTER: Judge, I guess my position is, I don't
09:38AM 13 see any point in repeating everything Mr. Tripi said within
09:38AM 14 the last hour; however, I do not concede that just because the
09:38AM 15 government found X, Y, or Z in a clubhouse or in somebody's
09:38AM 16 house it's automatically attributable to Mr. Barnes.

09:38AM 17 THE COURT: Okay.

09:38AM 18 MR. COTTER: For the purpose of expediency, I have no
09:38AM 19 objection. For the purposes of guilt by association, vehement
09:38AM 20 objection.

09:38AM 21 THE COURT: I think that's a fair limitation, so I
09:39AM 22 will consider the exhibits that were utilized by Mr. Tripi in
09:39AM 23 the case of *United States v. Ermin* as applying on behalf of
09:39AM 24 the government in its presentation in the case of *United*
09:39AM 25 *States v. Barnes* so we don't have to go through that whole

09:39AM 1 scenario, but I recognize Mr. Cotter's position as far as the
09:39AM 2 rights of his client are concerned.

09:39AM 3 MR. COOPER: And, Judge, I appreciate that. And just
09:39AM 4 to be clear, it would be the marked exhibits, the physical
09:39AM 5 exhibit themselves, and also the proffered information from
09:39AM 6 Mr. Tripi. Is that fair game as well?

09:39AM 7 THE COURT: Yes.

09:39AM 8 MR. COOPER: Okay. Thank you, Judge.

09:39AM 9 THE COURT: That is the references to the Pharaoh's
09:40AM 10 club and the motorcycle club and the patches and all that?

09:40AM 11 MR. COOPER: Yes, Judge.

09:40AM 12 THE COURT: Yes.

09:40AM 13 MR. TRIPI: Judge, sorry to speaking from the bench
09:40AM 14 here. For the record, I did give Mr. Cotter a copy of
09:40AM 15 everything that I have shown the Court.

09:40AM 16 MR. COTTER: So acknowledged.

09:40AM 17 THE COURT: Okay. Mr. Cooper?

09:40AM 18 MR. COOPER: Thank you, Judge.

09:40AM 19 So, Your Honor, the defendant is charged in one count on a
09:40AM 20 complaint with violating Title 18, United States Code, Section
09:40AM 21 922(g)(1). Distinct from Defendant Ermin or Defendant
09:40AM 22 Roncone, Defendant Barnes is charged with a violation of
09:40AM 23 Subsection 1 of Section 922(g) because he's a prohibited
09:40AM 24 person due to a prior conviction for an offense punishable by
09:41AM 25 one year or more imprisonment. And, specifically, Judge, I

09:41AM 1 guess what I'll start with on that note, is the actual
09:41AM 2 conviction. And I provided Mr. Cotter via email before we
09:41AM 3 came to court today with the documents that the government has
09:41AM 4 related to that conviction. That was a conviction while the
09:41AM 5 defendant was in the United States military. The conviction,
09:41AM 6 the offense of conviction, was wrongful possession,
09:41AM 7 distribution, and use of LSD. That's from 23 May 1991. As a
09:41AM 8 result of that conviction, the defendant was incarcerated for
09:41AM 9 a period of four years in Leavenworth and other military
09:42AM 10 prisons.

09:42AM 11 THE COURT: Was that a court martial proceeding?

09:42AM 12 MR. COOPER: I believe so, Judge.

09:42AM 13 THE COURT: Is the standard of guilt different?

09:42AM 14 MR. COOPER: Not that I'm aware of, Your Honor.

09:42AM 15 THE COURT: As far as what the military had to prove?

09:42AM 16 MR. COOPER: Meaning the burden of proof?

09:42AM 17 THE COURT: Burden of proof, yes.

09:42AM 18 MR. COOPER: I don't know the answer to that
09:42AM 19 question, Judge.

09:42AM 20 MR. COTTER: Judge, Mr. Cooper -- if I may,
09:42AM 21 Mr. Cooper and I discussed this briefly. Although I'm more
09:45AM 22 than willing to accept his ability and talent and knowledge
09:45AM 23 and so on, neither one of us know diddly about the Uniform
09:45AM 24 Code of Military Justice other than the acronym. And I --

09:45AM 25 THE COURT: Well, just for full disclosure, I am, at

09:45AM 1 one time, I don't know if it still exists, but way back in
09:45AM 2 1961, I was admitted to the Court of Military Justice.

09:45AM 3 MR. COTTER: Maybe you could advise us then.

09:45AM 4 MR. COOPER: Well, Judge, I believe that the Court
09:45AM 5 certainly signed a criminal complaint. And that was spelled
09:45AM 6 out in detail in the factual basis of the criminal complaint
09:45AM 7 that that was the underlying felony that the government was
09:45AM 8 relying on. And I would note that the definition or at least
09:46AM 9 the statutory definition of a felony offense is an offense
09:46AM 10 punishable by one year or more of incarceration. And then, in
09:46AM 11 this instance, the defendant was sentenced to a period of four
09:46AM 12 years of incarceration.

09:46AM 13 So, it's the government's position that the defendant is a
09:46AM 14 previously-convicted felon, and was found to be in possession
09:46AM 15 of a loaded firearm in the Outlaws Motorcycle Club clubhouse.

09:46AM 16 So, the bases for detention, there's quite a few. Under
09:46AM 17 Title 18, United States Code, Section 3142(f)(1)(A), a
09:46AM 18 violation of 922(g)(1) is a crime of violence. And the Second
09:47AM 19 Circuit ruled on that in *United States v. Watkins*. That's 940
09:47AM 20 F.3d 152 (2d Cir. 2019).

09:47AM 21 In that case, the Circuit held it has long been the law in
09:47AM 22 our Circuit that possession of a firearm is unequivocally a
09:47AM 23 crime of violence for the purposes of 3142(f)(1)(A). There,
09:47AM 24 the Court's reasoning in arriving at that conclusion applies
09:47AM 25 with equal force to the crime of possession of ammunition by a

09:47AM 1 convicted felon. Like possession of a firearm, possession of
09:47AM 2 ammunition gives rise to some risk that the ammunition may be
09:47AM 3 used in an act of violence. So, our starting point,
09:47AM 4 3142(f)(1)(A), is a basis for detention because the offense is
09:48AM 5 a crime of violence.

09:48AM 6 Under Title 18, United States Code, Section 3142(f)(1)(E),
09:48AM 7 there's a basis for detention when a defendant is charged with
09:48AM 8 any felony that is not otherwise a crime of violence that
09:48AM 9 involves the possession or use of a firearm or destructive
09:48AM 10 device or any other dangerous weapon. And I would highlight
09:48AM 11 for the Court that 3142(f)(1)(E) does not require the use of a
09:48AM 12 firearm. It requires the possession or use. And, in this
09:48AM 13 instance, the defendant is charged with possessing a firearm.

09:48AM 14 Title 18, United States Code, Section 3142(f)(2)(A)
09:48AM 15 provides another basis for detention in this case; a serious
09:49AM 16 risk that such person will flee, and I'll get to that in a
09:49AM 17 little bit. And Title 18, United States Code, Section
09:49AM 18 3142(f)(2)(B), a serious risk that such person will obstruct
09:49AM 19 or attempt to obstruct justice or threaten, injure, or
09:49AM 20 intimidate a prospective witness or juror. So, those four
09:49AM 21 bases for detention are what the government is relying on in
09:49AM 22 its motion today, Your Honor.

09:49AM 23 The Court's got to start its analysis with the factors
09:49AM 24 under 3142(g). The first factor that's listed, as the Court
09:49AM 25 well knows, is the nature and circumstances of the offense; in

09:49AM 1 particular, whether it's an offense which is violent, or non-
09:50AM 2 violent in nature or involves narcotics. And here, Judge, the
09:50AM 3 Second Circuit has already spoken on that. This offense, in
09:50AM 4 the eyes of the Circuit, is violent in nature for the purposes
09:50AM 5 of Section 3142. Being a felon in possession of a firearm is
09:50AM 6 an inherently violent crime for the purposes of the Bail
09:50AM 7 Reform Act.

09:50AM 8 I would also point out for the Court, on the subject of
09:50AM 9 the nature and circumstances of the offense, in the prior
09:50AM 10 case, in the detention hearing with respect to Mr. Ermin, the
09:50AM 11 Court questioned the parties and made a record about the
09:50AM 12 rifles and the shotgun being consistent with, you know,
09:51AM 13 possible use for hunting or sporting purposes. And that's not
09:51AM 14 what we have here in the case involving Mr. Barnes.

09:51AM 15 The firearm that was recovered from the Outlaws clubhouse
09:51AM 16 with respect to Mr. Barnes was not a hunting rifle. It was
09:51AM 17 not a skeet shotgun. It was a loaded Glock semi-automatic
09:51AM 18 pistol. And I think that's an important distinction to draw
09:51AM 19 in this case.

09:51AM 20 Also, I want to break for a second and address the Court's
09:51AM 21 question earlier about the standard of proof in a military
09:51AM 22 proceeding. Mr. Tripi just did some quick research for me,
09:51AM 23 and it's the government's position that the standard of proof
09:51AM 24 is guilt beyond a reasonable doubt, and that that can be found
09:51AM 25 in 10 United States Code, Section 851(c)(1), guilt beyond a

09:52AM 1 reasonable doubt via lawful, competent evidence.

09:52AM 2 So, with respect to the nature and circumstances of the
09:52AM 3 offense charged in this criminal complaint, Judge, we're
09:53AM 4 talking about what was recovered inside the Outlaws'
09:53AM 5 clubhouse.

09:53AM 6 And what we have here is I'm showing the Court what's
09:53AM 7 already been displayed as Government's Exhibit 9B. This is
09:53AM 8 being held by an FBI agent shortly after it was observed and
09:53AM 9 recovered. You can see the slide's partially pulled back and
09:54AM 10 there's a round seated in the chamber of this firearm.

09:54AM 11 In Government's Exhibit 9C, as in Charlie, the magazine
09:54AM 12 has been removed and you can see that the magazine is loaded
09:54AM 13 with ammunition. Again, not a sporting rifle, not a skeet
09:54AM 14 shotgun, a loaded Glock semi-automatic pistol. And let's talk
09:54AM 15 about where it was recovered. And that's going to kind of
09:54AM 16 blend from the nature and circumstances of the offense into
09:54AM 17 the weight of the evidence against the person.

09:54AM 18 I'm sure Mr. Cotter is going to tell you it's a biker
09:54AM 19 clubhouse. A lot of people come in and out of the biker
09:54AM 20 clubhouse. How do we know that the semi-automatic pistol
09:54AM 21 belongs to Mr. Barnes? Well, Judge, when Mr. Barnes was being
09:54AM 22 detained by law enforcement outside of the Outlaws' clubhouse,
09:55AM 23 he made some statements to them. Specifically, he was asked
09:55AM 24 about whether there were any weapons in the house. He said he
09:55AM 25 had no weapons on him. Then, he further offered up, when they

09:55AM 1 asked again, are there any weapons inside, he offered up, not
09:55AM 2 that I know of. The first response was, none on me. And that
09:55AM 3 was true. He didn't have any weapons on his person. Then, he
09:55AM 4 makes a statement about two minutes after that to an agent and
09:55AM 5 he says, my cell phone is at the top of the stairs, and he
09:55AM 6 describes a location where his cell phone is inside the
09:55AM 7 clubhouse.

09:55AM 8 Agents recovered this Glock pistol within five feet of the
09:56AM 9 location where the defendant's cell phone was. And he told
09:56AM 10 them where his cell phone was. There's a sleeping area.
09:56AM 11 There's a bedside table, the defendant's wallet, the
09:56AM 12 defendant's ID in the wallet, I believe, including his Social
09:56AM 13 Security card, all inside there in the same exact location as
09:56AM 14 this loaded Glock pistol. He's also the only person in the
09:56AM 15 clubhouse at the time that it's searched.

09:56AM 16 So, we have his personal belongings, the loaded firearm
09:56AM 17 within feet of his cell phone, and he described to law
09:56AM 18 enforcement where that cell phone would be recovered, where it
09:56AM 19 could be located.

09:56AM 20 So, the weight of the evidence. There's a certified
09:56AM 21 conviction that he's a felon, and there's this loaded Glock
09:57AM 22 pistol found within feet of his other personal effects
09:57AM 23 including his identification and his cell phone. I would
09:57AM 24 argue to the Court that the weight of the evidence here is
09:57AM 25 strong, and I would also front for the Court that that's not a

09:57AM 1 factor that United States Probation is permitted to consider
09:57AM 2 when they make a recommendation. So, it's information that
09:57AM 3 Your Honor should properly consider under the Bail Reform Act.
09:57AM 4 But it's not something that Probation considers when they make
09:57AM 5 their recommendation. But, here, I would argue that the
09:57AM 6 weight of the evidence is strong.

09:57AM 7 The defendant's cell phone is at the very top of the
09:57AM 8 stairs on the TV stand adjacent to a stairwell. And, about
09:58AM 9 five feet from that cell phone, in plain view, on a bedside
09:58AM 10 table, is the loaded Glock pistol. His wallet and keys were
09:58AM 11 all in the immediate vicinity of both the cell phone and the
09:58AM 12 firearm.

09:58AM 13 Defendant can't reasonably -- or counsel can't reasonably
09:58AM 14 argue to this Court, oh, he had no idea it was in the house.
09:58AM 15 It's next to his phone. It's next to his wallet, his ID, and
09:58AM 16 his keys. It doesn't take a rocket scientist to assess who
09:58AM 17 possesses that firearm. It certainly doesn't take a rocket
09:58AM 18 scientist to know that the defendant lied to the agents when
09:58AM 19 they asked him if there were any firearms or weapons inside
09:58AM 20 the house.

09:58AM 21 He obviously knew there was a loaded Glock feet away from
09:58AM 22 his cell phone and on the same table as his keys and his
09:59AM 23 wallet, but he didn't tell them that. It's understandable why
09:59AM 24 he didn't tell him that. It's a statement against his
09:59AM 25 interest. But it, A, shows he's willing to be dishonest to

09:59AM 1 law enforcement and, B, it's evidence of his consciousness of
09:59AM 2 guilt that he's not going to acknowledge that there's a loaded
09:59AM 3 firearm inside the house.

09:59AM 4 The third factor for the Court to consider is the history
09:59AM 5 and characteristics of the person; character, including
09:59AM 6 physical and mental condition; family ties; employment;
09:59AM 7 financial resources; length of time in the community;
09:59AM 8 community ties; past conduct; and history related to drug or
09:59AM 9 alcohol abuse; criminal history; record of court appearances,
10:00AM 10 and so forth.

10:00AM 11 Now, the Pretrial Services report addresses some of that.
10:00AM 12 One example is the substance abuse portion, history related to
10:00AM 13 drug or alcohol abuse. The defendant provided some
10:00AM 14 information to probation about that and he withheld other
10:00AM 15 information. And that's on page 3 of the Pretrial Services
10:00AM 16 report.

10:00AM 17 The defendant reported that he checked himself into High
10:01AM 18 Point Treatment Center in the past and has been sober since
10:01AM 19 January 1, 2021. The defendant declined to disclose what
10:01AM 20 substances he previously used. So, there's some indication
10:01AM 21 from the defendant that he's at least a prior user of
10:01AM 22 controlled substances, although he wasn't keen on telling US
10:01AM 23 Probation which substances those were.

10:01AM 24 The defendant also has a criminal history, as evidenced in
10:01AM 25 Government Exhibit 18, which is the certified conviction

10:01AM 1 that's been provided to Mr. Cotter. It indicates the
10:01AM 2 defendant's prior for four years for this felony offense.
10:01AM 3 There's also some facts that I can display. And the essence
10:01AM 4 of the offense is distributing LSD. It's contained right on
10:02AM 5 the first page. There's a basis for the investigation, and I
10:02AM 6 can hand this up to the Court if you'd like to read it more
10:02AM 7 closely. But, in substance, PV2 Barnes distributed LSD to
10:02AM 8 another PV2 while in the military. It's not a complex case.
10:02AM 9 It's a felony. That's a part of his criminal history.

10:02AM 10 THE COURT: That was in what year?

10:02AM 11 MR. COOPER: Nineteen ninety-one, Judge.

10:02AM 12 MR. COTTER: It's 32 years ago, Judge.

10:02AM 13 MR. COOPER: You'll have a turn in a moment.

10:02AM 14 Judge, there's also an arrest for -- from Epping, New
10:02AM 15 Hampshire for simple assault. It would be a misdemeanor. I'd
10:03AM 16 focus to the Court -- I'd draw the Court's attention to the
10:03AM 17 fact specifically that assault, while it's a misdemeanor, is a
10:03AM 18 crime of violence by its nature. It's assault. And
10:03AM 19 regardless of the defendant's sentence to good behavior, it
10:03AM 20 should draw concern to this Court about the defendant's
10:03AM 21 history and characteristics, which is something the Bail
10:03AM 22 Reform Act asks you and calls you to consider.

10:03AM 23 Now, in addition to that criminal history, Judge, the
10:03AM 24 defendant is a member of the Outlaws Motorcycle Gang. Now,
10:03AM 25 Mr. Tripi gave a lengthy proffer to the Court about what that

10:03AM 1 means and what inferences the Court -- the government is
10:03AM 2 asking the Court to draw as a result of that. And so, I'm
10:03AM 3 only going to hit on a couple points. First of all, with
10:04AM 4 respect to risk of flight, it's the government's position that
10:04AM 5 when you belong to an organization with members all over the
10:04AM 6 country, and all over the world, that that inherently enhances
10:04AM 7 a risk of flight. And I understand the Court's --

10:04AM 8 THE COURT: Isn't that true of the Boy Scouts?

10:04AM 9 MR. COOPER: And I understand the Court's argument to
10:04AM 10 the government which is, does that include the Boy Scouts?
10:04AM 11 And I would submit that it does not include the Boy Scouts.

10:04AM 12 I think there's a -- I understand the Court is making a
10:04AM 13 remark about that, but I would submit that there's an obvious
10:04AM 14 difference between a group that calls themselves the Outlaws
10:04AM 15 and lives by these mottos of "Snitches are a dying breed" and
10:04AM 16 "God forgives and Outlaws don't" and the Boy Scouts, which is
10:04AM 17 a youth development and charitable organization. And if the
10:05AM 18 Court doesn't see that distinction, that's fine, and I'll move
10:05AM 19 on, but I would submit that it's an obvious distinction.

10:05AM 20 And so, when you have -- the organization has been
10:05AM 21 involved in multiple indictments for RICO cases. That's not
10:05AM 22 what we have here, but that's the organization. That's the
10:05AM 23 same group, not --

10:05AM 24 THE COURT: Isn't that guilt by association? Is that
10:05AM 25 your argument?

10:05AM 1 MR. COOPER: Well, Judge, evidence of an association
10:05AM 2 is not prohibited in a detention hearing. In fact, I would
10:05AM 3 submit to the Court --

10:05AM 4 THE COURT: All I am asking is, isn't that what
10:05AM 5 you're arguing?

10:05AM 6 MR. COOPER: Well, no, Judge. I'm not asking you to
10:05AM 7 convict the defendant. I'm telling you that he's a risk of
10:05AM 8 flight because of his association with individuals all over
10:05AM 9 the country and all over the world.

10:05AM 10 THE COURT: Wait a minute. You're asking me to lock
10:05AM 11 this man up for a lengthy period of time.

10:05AM 12 MR. COOPER: Correct.

10:05AM 13 THE COURT: Before this case comes to trial. That's
10:06AM 14 punitive. I'm not here to determine guilt or innocence. So,
10:06AM 15 that's not what I'm suggesting or indicating when I ask my
10:06AM 16 question of, when you say that he belongs to or has contacts
10:06AM 17 with other organizations, therefore, he should be locked up,
10:06AM 18 to me, that's saying because he's guilty by association with
10:06AM 19 these organizations.

10:06AM 20 MR. COOPER: That's not what I'm arguing, Judge. If
10:06AM 21 you'll let --

10:06AM 22 THE COURT: Now, a thought came to my mind, and I
10:06AM 23 just throw it out because it came to my mind. I've heard
10:06AM 24 about symbols and patches and so forth. The Oakland Raiders,
10:07AM 25 on their helmets -- National Football League, which now plays

10:07AM 1 in Germany and England, has a skull and crossbones. The
10:07AM 2 raiders were known for their fierceness.

10:07AM 3 MR. COOPER: And Judge, if the Raiders had been
10:07AM 4 previously indicted for RICO, and then their national
10:07AM 5 president had been convicted for RICO offense, I would make
10:07AM 6 the same argument to Your Honor; which is, it's a criminal
10:07AM 7 organization, and members of criminal organizations that have
10:07AM 8 contacts all over the country, all over the world, are a risk
10:07AM 9 of flight. If the Court doesn't see that, I don't understand
10:07AM 10 how you can't see the distinction between --

10:07AM 11 THE COURT: So, if he belonged to an organization to
10:08AM 12 which somebody has been convicted, there's a risk of flight?

10:08AM 13 MR. COOPER: So, Judge, what I'm arguing to you is
10:08AM 14 that, when you have an organization like this one, look at
10:08AM 15 this one, instead of different ones, this one --

10:08AM 16 THE COURT: I'm not looking at an organization
10:08AM 17 because I don't see anything about an organization that is
10:08AM 18 charged. What I see is a charge against an individual
10:08AM 19 supposedly unlawfully possessing a weapon because he had
10:08AM 20 previously been convicted of a crime.

10:08AM 21 MR. COOPER: So, Judge, the Bail Reform Act --

10:08AM 22 THE COURT: Under Title 18, United States Code,
10:09AM 23 922(g)(1). That's what I see in front of me.

10:09AM 24 MR. COOPER: The Bail Reform Act asks you to consider
10:09AM 25 the history and characteristics of the person. And part of

10:09AM 1 that is association with organizations. I'm going to proffer
10:09AM 2 about that, and the Court can give it what weight that it
10:09AM 3 chooses to give it. But in --

10:09AM 4 THE COURT: Are any of those organizations prohibited
10:09AM 5 by law from existing? In fact, they're incorporated under
10:09AM 6 state laws, aren't they?

10:09AM 7 MR. COOPER: Judge, I'm not asking you to consider --

10:09AM 8 THE COURT: Answer my question.

10:09AM 9 MR. COOPER: No. I don't believe that they are. The
10:09AM 10 question is --

10:09AM 11 THE COURT: You don't think they are incorporated?

10:09AM 12 MR. COOPER: No. I don't believe that they're
10:09AM 13 illegal and not allowed to exist. The question -- what I'm
10:09AM 14 arguing to you is that membership in an organization with that
10:10AM 15 sort of reach and with clubhouses all over the world allows
10:10AM 16 you --

10:10AM 17 THE COURT: Is that membership illegal?

10:10AM 18 MR. COOPER: No, Judge. What I'm -- the argument,
10:10AM 19 though, is that you have other places to go where you can have
10:10AM 20 resources, where you have people looking out for you, where
10:10AM 21 you can pick up where you left off, where a defendant,
10:10AM 22 individually, who is not a member of some transnational
10:10AM 23 organization, doesn't have those same resources accessible to
10:10AM 24 them. So, the argument is, when you have a group that has
10:10AM 25 clubhouses in different countries, and members in those

1 different countries, that it's easier to pick up and relocate
2 to a different country because you have contacts there.

3 THE COURT: The fact that it's easier doesn't mean
4 that it's probable.

5 MR. COOPER: It's part of the proffer as to risk of
6 flight. That's why I'm proffering it. And the Court --

7 THE COURT: All right.

8 MR. COOPER: I don't understand how you can't
9 consider it. That's --

10 THE COURT: All right. I understand now what you're
11 saying. All I'm saying is, it doesn't mean it's probable.

12 MR. COOPER: May I continue?

13 THE COURT: Yes.

14 MR. COOPER: Thank you, Judge.

15 So, when you have clubhouses all over the world that
16 you're able to go and show up at and, basically, pick up where
17 you left off because you'll have other members supporting you,
18 other members helping you out, that presents a different
19 reality for this defendant than it does for many defendants
20 who appear in front of you.

21 A drug dealer in Buffalo who sells drugs in Buffalo and
22 has no contacts outside of Buffalo would have a more difficult
23 time fleeing to Brazil than a defendant who belongs to a group
24 that had 16 clubhouses in Brazil. That's --

25 THE COURT: You really want to use that as an example

10:12AM 1 when I've seen hundreds and hundreds and hundreds of
10:12AM 2 government applications about somebody belonging to a criminal
10:12AM 3 organization where they get narcotics from Mexico, and they
10:12AM 4 get narcotics from Guatemala, and they get narcotics from
10:12AM 5 Brazil, and they get narcotics from Columbia, and they have
10:12AM 6 these connections all over the world for their distribution?

10:12AM 7 MR. COOPER: Okay. And those are viable arguments --

10:13AM 8 THE COURT: But the government doesn't make an
10:13AM 9 argument that this person is a flight risk because of their --
10:13AM 10 having these different locations.

10:13AM 11 MR. COOPER: Well, Judge, I made an argument in
10:13AM 12 *United States v. Washington* in front of Your Honor that,
10:13AM 13 because the defendant had contacts in Ohio and contacts in
10:13AM 14 Bradford, Pennsylvania, that he posed a flight risk. And Your
10:13AM 15 Honor detained the defendant both as a risk of flight and as a
10:13AM 16 danger to the community.

10:13AM 17 THE COURT: There were other reasons that I took into
10:13AM 18 consideration.

10:13AM 19 MR. COOPER: Absolutely. But that was an argument
10:13AM 20 that I made to Your Honor, and you're saying you don't hear
10:13AM 21 those arguments. It happened in --

10:13AM 22 THE COURT: No. I'm talking about in applications
10:13AM 23 that are being made for either criminal complaints or for
10:13AM 24 search warrants about how there are all these cartels all over
10:13AM 25 the world. But I don't hear the government, when it comes

1 time on the bail arguments, to say, well, this guy is a flight
2 risk because he has all these relationships.

3 MR. COOPER: I can't speak to arguments that aren't
4 made in cases that aren't this one before the Court. I can
5 speak to the argument that's being made in this case which is,
6 that when you're a member of an organization with clubhouses
7 all over the world, that enhances the risk of flight. I'll
8 move on.

9 THE COURT: All right.

10 MR. COOPER: I get how you feel about it.

11 THE COURT: It's not a question of how I feel,
12 Mr. Cooper, it's a question of how I'm going to keep my oath
13 to uphold the Constitution of the United States of America,
14 and the laws of the United States of America, and apply those
15 laws to the best of my ability in an unbiased, honest,
16 intellectually honest way.

17 MR. COOPER: Absolutely, Judge.

18 So, if the defendant chose to flee to Alabama, there would
19 be three chapters for him to flee to. If he chose to flee to
20 Arkansas, two chapters there to flee to. If he choose to flee
21 to Colorado, he'd only have one chapter to chose from; 2 in
22 Connecticut; 16 in Florida; 8 in Georgia; 16 in Illinois; 7 in
23 Indiana; 5 in Kentucky. Any one of these he can show up and
24 he'll be sleeping in the clubhouse just like he was in
25 Buffalo.

1 Two in Maine; six in Massachusetts; five in Michigan; one
2 in Missouri; one in New Hampshire; four in New York, although
3 I image he wouldn't pick any of those; nine in North Carolina;
4 ten in Ohio; five in Oklahoma; ten in Pennsylvania; one in
5 Rhode Island; two in South Carolina; eight in Tennessee; one
6 in Vermont; one in Virginia; and ten others to choose from in
7 Wisconsin.

8 By that count, there's over 136 listed chapters in 25 of
9 the United States. And I'm not making that stuff up, Judge.
10 It's on their publicly-available website.

11 In addition to the clubhouses here in the United States,
12 there's the global reach which causes more concerns. Because,
13 if the defendant decides to vacation in sunny South America,
14 there's 14 different chapters for him to chose from in Brazil.
15 He can go to Canada, France, Belgium, England, where he can
16 choose from 14 different chapters. He'll be sleeping on the
17 couch in Ireland, or Germany, or Thailand, or Sweden, or
18 Italy, or Poland, or Russia, or Japan, where they have a
19 clubhouse, or the Philippines, or Spain, or Serbia, or
20 Austria, or Switzerland, or the Czech Republic.

21 And so, the point that's being made is, just as the
22 defendant relocated from Massachusetts down here to Western
23 New York and crashed on a couch at a clubhouse for years, he
24 can do that to any of these other locations which positions
25 him differently than many of the defendants that stand before

10:18AM 1 Your Honor.

10:18AM 2 The nature and seriousness of the danger to any person or
10:18AM 3 to the community that would be posed by the person's release.

10:18AM 4 The defendant is believed by law enforcement to be a member of
10:18AM 5 the national leadership of the Outlaws Motorcycle Club. The
10:18AM 6 defendant is a member of the BBT, the Baseball Bat Team, a
10:18AM 7 status conferred upon members of the gang who have been
10:18AM 8 recognized for their willingness to commit acts of violence on
10:18AM 9 behalf of the gang.

10:18AM 10 Additionally, the defendant's position within the club is
10:18AM 11 a position of enforcer; again, acknowledging his willingness
10:18AM 12 and history of violence. The defendant came into the Western
10:19AM 13 District of New York in Fall of 2021.

10:19AM 14 Notably, Judge, that's shortly after Gerace was charged in
10:19AM 15 the superseding indictment and after it became clear that law
10:19AM 16 enforcement had a spotlight on Pharaoh's Gentlemen's Club.
10:19AM 17 The defendant's vest bears the -- I'm sorry, Judge. Strike
10:19AM 18 that. The defendant has worn club gear, Outlaws gear, that
10:19AM 19 indicates that he's got, like, a nationwide status within the
10:19AM 20 club; United States running along the bottom of the
10:19AM 21 paraphernalia or the gear, whatever you call it.

10:19AM 22 His leadership role in one of the largest criminal gangs
10:20AM 23 in the world offers him the -- essentially, an army of
10:20AM 24 supporters who are, basically, duty bound by the club's
10:20AM 25 policies to do what the defendant needs in this case. And

10:20AM 1 it's not hard to discern what they need, Judge. You saw it in
10:20AM 2 exhibit after exhibit that Mr. Tripi put before the Court.
10:20AM 3 Snitches are a dying breed. Snitches get stitches. A dead
10:20AM 4 rat skeleton hanging over the bar by a noose. It's pretty
10:20AM 5 clear what the intent is with respect to when these defendants
10:20AM 6 get charged, what's expected to happen to witnesses against
10:20AM 7 them.

10:20AM 8 The Nazism and white supremacy stuff all over the
10:20AM 9 clubhouse presents a danger to the community. That was
10:21AM 10 proffered and detailed before. With respect to this
10:21AM 11 defendant, I would submit to the Court that there is letters
10:21AM 12 and paperwork found among his belongings that included
10:21AM 13 communication with other members of the this criminal gang in
10:21AM 14 prisons across the country.

10:21AM 15 Some of those letters were written on, like, SS letterhead
10:21AM 16 from the *Einsatzgruppen*. The defendant's books next to his
10:21AM 17 bed were Nazi books. That should cause a concern to this
10:21AM 18 Court about the danger that this defendant poses to the
10:21AM 19 community.

10:21AM 20 And, before we get to the First Amendment, I understand
10:21AM 21 the Court's position with respect to the First Amendment, and
10:21AM 22 I'm not advocating for restrictions of free speech. What I'm
10:22AM 23 doing is pointing out the danger that this defendant poses to
10:22AM 24 the community based upon his apparent adherence to white
10:22AM 25 supremacy or Nazi beliefs. Again, that's been proffered

1 pretty extensively by Mr. Tripi. The clubhouse has a giant
2 swastika flag that everybody signs hanging on the wall.
3 Judge, the membership in a large criminal organization
4 like this one also offers the defendant steady and constant
5 access to firearms or other dangerous weapons. And that's
6 another thing to consider, as opposed to an individual
7 defendant who is not a member of a group like this. This
8 defendant has access to all these others all across the
9 country and all across the world. And if he needs to get a
10 firearm, it's obviously not that difficult. Despite being a
11 convicted felon, he was able to get a hold of this Glock that
12 was recovered on Thursday last week.

13 THE COURT: You use the term a number of times of
14 this being a criminal organization, referring to this
15 motorcycle club, but I'm not aware of any finding of
16 criminality resulting in a judgment of conviction that would
17 warrant the label that this is a criminal organization.

18 MR. COOPER: Judge, give me a moment. I'll get that
19 answer for you. Judge, I'll pull that up. Give me just one
20 second.

21 THE COURT: Well, I heard you say something about 15
22 years.

23 MR. COOPER: That's the statutory maximum found in
24 Title 18, United States Code Section --

25 THE COURT: But that's not what he would face

1 necessarily if he were convicted of this present charge.

2 MR. COOPER: That would be the statutory maximum if
3 he were convicted.

4 THE COURT: I said, but that's not what he would
5 necessarily get if he is convicted of this charge. All I'm
6 asking is what would the federal sentencing guidelines call
7 for.

8 MR. COOPER: Sure. We're looking that up right now,
9 Judge.

10 THE COURT: That's all my question was.

11 MR. COOPER: Absolutely. Judge, we may have -- the
12 guidelines would place the defendant due to the prior drug
13 felony conviction somewhere around 33 to 41 months, so in the
14 neighborhood of three years in prison.

15 THE COURT: It's a lot different than 15 years, isn't
16 it?

17 MR. COOPER: Well, Judge, the guidelines are
18 recommendations. They're not the --

19 THE COURT: Which are to be considered by the
20 sentencing judge.

21 MR. COOPER: Absolutely. And all -- Judge, all I was
22 indicating was what was statutory maximum penalty was.

23 THE COURT: You made the statement this defendant
24 faces 15 years imprisonment, which is the motivation for
25 flight.

10:26AM 1 MR. COOPER: It's an accurate statement. That's the
10:26AM 2 statutory maximum. A judge in this building could sentence
10:26AM 3 him up to 15 years.

10:26AM 4 THE COURT: I know that's the maximum. That's why I
10:26AM 5 asked what the federal sentencing guidelines would call for
10:26AM 6 because I can't believe that the district judge, if there were
10:26AM 7 a conviction, would sentence him to 15 years based on the
10:26AM 8 criminal history.

10:26AM 9 MR. COOPER: I think they would consider the 3553(a)
10:26AM 10 factors in making that determination, but I'm finished with
10:26AM 11 the proffer. I appreciate the Court's time.

10:26AM 12 THE COURT: Mr. Cotter?

10:26AM 13 MR. COTTER: I will be brief, Judge. First, I
10:27AM 14 believe that the Court is in possession of a letter that
10:27AM 15 appears undated from a doctor named Joseph Kowalski.

10:27AM 16 THE COURT: Yes. That was the orthopedic surgeon?

10:27AM 17 MR. COTTER: Correct.

10:27AM 18 THE COURT: And --

10:27AM 19 MR. COTTER: I'll get to that in a minute. I just
10:27AM 20 wanted to make sure you had it.

10:27AM 21 THE COURT: Right. That's Dr. Joseph M. Kowalski, MD
10:27AM 22 addressed to you, Mr. Cotter, indicating that Mr. Scott
10:27AM 23 Barnes, that he had performed orthopedic surgery on him on
10:27AM 24 November 14th or -- I'm sorry, yes, November 14th, 2023.

10:27AM 25 MR. COTTER: Okay. Very briefly, Judge, with respect

10:28AM 1 to the government's proffer, the first thing I want the Court
10:28AM 2 to understand is that Scott Barnes is not in possession of a
10:28AM 3 passport or any other international travel documents. So, the
10:28AM 4 prospect -- should the Court decide to impose some terms and
10:28AM 5 conditions, the prospect of him going to Brazil or Ireland or
10:28AM 6 any of the other lovely places doesn't exist. Mr. Barnes
10:28AM 7 also, from the bail report, Judge, you'll see that he has \$500
10:28AM 8 in his bank account. The ability of him to be able to provide
10:28AM 9 transportation to go some place also doesn't really exist.

10:28AM 10 Now, the letter that I handed to you, Judge, only refers
10:28AM 11 to one back surgery that took place in November of 2023. The
10:29AM 12 situation, I think, if I understand it correctly -- and,
10:29AM 13 Judge, I hope the Court understands that I got the call on
10:29AM 14 this case late Friday after -- early Friday afternoon.
10:29AM 15 Mr. Barnes is housed in Livingston County, approximately 90
10:29AM 16 minutes east of Buffalo, and I have not been able to get there
10:29AM 17 to see him.

10:29AM 18 I have talked to him on the telephone and I met with him
10:29AM 19 for about 30 minutes before we got here today. So, I've got
10:29AM 20 some information, but I don't have a four-month or a two-month
10:29AM 21 or a one-month investigation into this as I stand here today.
10:29AM 22 But what I do understand is, back in March of 2023, Mr. Barnes
10:29AM 23 was on his motorcycle in the State of Florida, hit a pothole,
10:29AM 24 and his bike broke, and he fell off. It was two days later
10:30AM 25 that he determined that he couldn't move his legs.

10:30AM 1 Mr. Barnes is employed as a union electrician. He's been
10:30AM 2 a member of the International Brotherhood of Electrical
10:30AM 3 Workers since about 1996 or 1997. He's a journeyman. He's a
10:30AM 4 skilled tradesman. He moved to Western New York because the
10:30AM 5 cost of living here is cheaper than it is in Eastern
10:30AM 6 Massachusetts where he is from. I don't know if I have to
10:30AM 7 cite any facts and figures about housing and wages and so on
10:30AM 8 and so forth, but Buffalo is a pretty good deal.

10:30AM 9 He was able to go back to work, I believe, in September or
10:30AM 10 October of 2023. And after a couple days at work, he lost his
10:30AM 11 balance, he fell, and he bent the tip of the rod in his back
10:31AM 12 that was inserted in March. That's why he had the surgery in
10:31AM 13 November. He has had two wickedly major back surgeries within
10:31AM 14 the past nine months.

10:31AM 15 I know that when you come out, Judge, we are all ready
10:31AM 16 standing. But, if you could observe him sit and stand, you
10:31AM 17 would see that he does it in a very labored fashion. He has
10:31AM 18 no risk of flight. He's definitely not running. All
10:31AM 19 right?

10:31AM 20 This prior conviction, you know, the Court indicated in a
10:32AM 21 sidebar, maybe we were off the record, that you were admitted
10:32AM 22 to the uniform -- the Court of Military Justice. I am very
10:32AM 23 unfamiliar with it. I don't know. I do know that that
10:32AM 24 conviction is from 32 years ago, and I hope Mr. Cooper will
10:32AM 25 accept my apology for interrupting him when he was speaking to

10:32AM 1 the Court as well. That's 32 years ago. And, if my
10:32AM 2 assessment is correct, Judge, it was three or four guys who
10:32AM 3 were all enlisted servicemen who were in possession of some
10:32AM 4 LSD on a weekend. One of them sold a tab to another. We're
10:32AM 5 not talking a major organization. We're talking about
10:33AM 6 knuckleheads in their early 20's in the military on leave or
10:33AM 7 on weekend. I'm not excusing it, but, for it to be
10:33AM 8 characterized as he's distributing or he's, you know, this
10:33AM 9 wicked criminal from three decades ago, I think is a little
10:33AM 10 far-fetched.

10:33AM 11 Now, one thing that does appear in the complaint, Judge,
10:33AM 12 which is something you are to consider today, is that the FBI
10:33AM 13 alleges that they started surveilling the clubhouse back, I
10:33AM 14 believe, it was November 6th. Mr. Barnes was arrested on
10:33AM 15 December 7th, roughly 30 days later. What is missing from
10:34AM 16 that criminal complaint is any allegation of any other
10:34AM 17 criminal activity perpetrated by Mr. Barnes during that 30 to
10:34AM 18 31-day period of time.

10:34AM 19 The FBI or the agent makes special note of the fact that
10:34AM 20 his car is regularly seen out there. I submit to the Court
10:34AM 21 that it's pretty logical that a guy who can't work because
10:34AM 22 he's got a broken back is depending on his friends to help
10:34AM 23 provide for him because he can't work because he's got a
10:34AM 24 broken back or he's recovering from pretty major surgeries.

10:34AM 25 The other thing that's missing from the bail report,

10:34AM 1 Judge, is a guy who is 55 years old who has not ever had a
10:34AM 2 warrant for his arrest or any warrants put out for him. I
10:34AM 3 think the risk of flight doesn't exist.

10:34AM 4 In terms of danger, Judge, I don't think it exists,
10:35AM 5 either. If -- you've been on the bench a while. I've been on
10:35AM 6 this side of the bench for a little while. I've seen people's
10:35AM 7 criminal records. I've seen 55-year-old guys' criminal
10:35AM 8 records. I've seen records that stretch for 20 or 30 pages.

10:35AM 9 Mr. Barnes does not believe that what is written in the
10:35AM 10 bail report with regard to the '19 -- or the 2018 or 2019
10:35AM 11 incident in New Hampshire is an accurate representation of the
10:35AM 12 result. I don't have anything to give the Court any different
10:35AM 13 than what's in the bail report.

10:35AM 14 But what I can say is, if we've got one conviction while
10:36AM 15 he's in the Army in 1991, and we've got some kind of dust up,
10:36AM 16 it sort of sounds like something that happened in a bar in
10:36AM 17 2018, we're not talking about a lot of danger there. All
10:36AM 18 right? He does have a right to bail, and he does have a right
10:36AM 19 to release.

10:36AM 20 He doesn't really have a residence here. I would assume
10:36AM 21 that, if the Court were to try to impose some terms and
10:36AM 22 conditions, one of those would be that he not live at the
10:36AM 23 clubhouse. Or, if the Court deferred to Probation, Probation
10:36AM 24 might say that. I am working on trying to find a place for
10:36AM 25 him. I've already given my card to the probation officer.

10:36AM 1 The deal, Judge, is simply that, between Friday afternoon and
10:36AM 2 today, I haven't had time to work it. And the individual who
10:37AM 3 is a friend of Mr. Barnes who is working it is, I believe,
10:37AM 4 still present in the courtroom, but I'm not going to turn
10:37AM 5 around, but he can't bring his phone up here. And so, he
10:37AM 6 can't make the calls. He did leave during the break between
10:37AM 7 the first one and this one, and I hope to have that answer
10:37AM 8 tomorrow.

10:37AM 9 Now, with respect to this weapon, Judge, the government
10:37AM 10 chose the words that they put in the complaint. It says that
10:37AM 11 it's in close proximity. It says it's near. It doesn't say
10:38AM 12 it's in his pocket. It doesn't say it has his DNA. It
10:38AM 13 doesn't say that it's registered to another member of the
10:38AM 14 Outlaws. We don't know any of that. All we know is that
10:38AM 15 there is a gun in this clubhouse.

10:38AM 16 Mr. Barnes was in the clubhouse when they raided it. I
10:38AM 17 haven't seen the return on any warrants. I don't know what
10:38AM 18 else they pulled out of the place. But I submit to you,
10:38AM 19 Judge, that maybe the evidence that they have is not as strong
10:38AM 20 as, A, they want to believe; and, B, what they want you to
10:38AM 21 believe. The complaint doesn't say that Mr. Barnes brandished
10:38AM 22 the weapon.

10:38AM 23 It doesn't really, you know -- well, let's just -- now,
10:38AM 24 briefly, Mr. Cooper made some reference to the point that
10:39AM 25 Mr. Barnes didn't necessarily provide all the information that

10:39AM 1 Probation asked for. What Mr. Barnes told the probation
10:39AM 2 officer during the interview is that he was not covered --
10:39AM 3 comfortable sharing personal information about his ex-wife or
10:39AM 4 his children, or his past drug usage, without the presence of
10:39AM 5 his attorney.

10:39AM 6 So, Judge, we are more than happy to submit to any
10:39AM 7 conditions that the Court wants to impose, and I trust that
10:39AM 8 Mr. Barnes will abide by them. He does need physical rehab in
10:39AM 9 order to learn how to walk again without pain. He does not
10:39AM 10 need to sleep on a metal cot in a holding center for the next
10:39AM 11 six months, nine months, two years, three years, five years.
10:39AM 12 He doesn't need that. We'd like to have him released please,
10:40AM 13 Judge. Thank you.

10:40AM 14 THE COURT: Mr. Cooper, anything you want to add?

10:40AM 15 MR. COOPER: No. Thank you, Judge.

10:40AM 16 THE COURT: All right. Once again, in considering
10:40AM 17 the government's motion to have the defendant detained, I
10:40AM 18 focus on the charge in the criminal complaint. And that
10:40AM 19 charge is a very limited one; namely, that the defendant
10:40AM 20 quote, did unlawfully possess a firearm in violation of Title
10:40AM 21 18, United States Code, Section 922(g)(1).

10:40AM 22 Section 922(g)(1) specifically states, quote, it shall be
10:40AM 23 unlawful for any person who has been convicted -- (audio
10:43AM 24 break) saying the government is relying on the statutory
10:43AM 25 presumption.

10:43AM 1 MR. COOPER: Okay. Thank you, Judge.

10:43AM 2 THE COURT: But there is an actual written
10:43AM 3 presumption that is a substantial one that I also take into
10:43AM 4 account, and that's the presumption of innocence to which a
10:43AM 5 defendant is a criminal case is entitled. And that is
10:43AM 6 contained within the Constitution of the United States, a
10:43AM 7 document that I swore to in an oath to uphold to the best of
10:43AM 8 my ability when I took this position.

10:43AM 9 The Bail Reform Act of 1984 also contains a presumption of
10:43AM 10 innocence. So, I have two presumptions; the Constitutional
10:44AM 11 one being the most substantive one, in my opinion, to take
10:44AM 12 into account, coupled with what has been proffered by the
10:44AM 13 government in its position that the defendant constitutes a
10:44AM 14 danger.

10:44AM 15 The government also takes a position that the defendant is
10:44AM 16 a flight risk, which it has a right to present. Now, as to
10:44AM 17 the question of flight, all that I need to be concerned with
10:44AM 18 is a preponderance of the evidence. With respect to
10:44AM 19 dangerousness in the case, I need to be convinced with clear
10:44AM 20 and convincing evidence of dangerousness. And, after taking
10:44AM 21 those two factors into account, I also have to examine whether
10:45AM 22 there are any terms and conditions that I can impose that
10:45AM 23 would reasonably address those issues; the issue of flight and
10:45AM 24 the issue of dangerousness, or whether there are no such terms
10:45AM 25 and conditions.

10:45AM 1 In doing that, I consider all of the factors. I consider
10:45AM 2 all of the information that has been presented, both by the
10:45AM 3 government and by defense counsel, and what has been presented
10:45AM 4 by the probation office in the Pretrial Services report,
10:45AM 5 including the criminal history of the defendant.

10:45AM 6 Now, we've already discussed the fact that the defendant
10:45AM 7 had a military conviction 32 years ago. The other convictions
10:45AM 8 set forth in the Pretrial Services report are misdemeanors
10:46AM 9 that occurred back in September of 2018, and there was a
10:46AM 10 disposition made in July of 2019.

10:46AM 11 The first charge was disorderly conduct under New
10:46AM 12 Hampshire law for which the defendant was sentenced for -- it
10:46AM 13 says to good behavior, and to have no contact with the victim.
10:46AM 14 The second was a simple assault, physical contact or BI, and
10:46AM 15 it says the defendant was sentenced for simple assault,
10:47AM 16 physical contact, or BI to good behavior. I see no other
10:47AM 17 criminal convictions in the Pretrial Services report.

10:47AM 18 It is my finding that, notwithstanding what the government
10:47AM 19 had proffered in support of its motion, that there are terms
10:47AM 20 and conditions that I can impose that would address the
10:47AM 21 government's concerns. On the issue of flight, that's easily
10:47AM 22 addressed. I'll order, and I will be ordering, monetary --
10:47AM 23 electronic monitoring of the defendant 24 hours so that there
10:48AM 24 is a way of knowing the whereabouts of the defendant at all
10:48AM 25 times.

10:48AM 1 As to the issue of dangerousness, the electronic
10:48AM 2 monitoring will also address that issue and the additional
10:48AM 3 terms and conditions I'm about to impose will address that
10:48AM 4 issue as well. So, in keeping with my obligation to
10:48AM 5 effectuate the Constitutional rights of the defendant where it
10:48AM 6 can be done reasonably without undo risk to members of the
10:48AM 7 community or the community itself, I'm obligated to effectuate
10:48AM 8 the defendant's Constitutional right of bail, which I am about
10:48AM 9 to do.

10:48AM 10 I'm releasing the defendant subject to the following terms
10:48AM 11 and conditions. And I want you to listen very carefully,
10:48AM 12 Mr. Barnes, because if you violate any one of those terms and
10:49AM 13 conditions or if you fail to obey any one of those terms and
10:49AM 14 conditions, that can result in your bail being revoked, and
10:49AM 15 your being locked up and kept locked up until this matter is
10:49AM 16 completed. Do you understand?

10:49AM 17 THE DEFENDANT: Yes, Your Honor.

10:49AM 18 THE COURT: You are hereby made subject to the
10:49AM 19 supervision and authority of the United States Probation
10:49AM 20 Office. And what that means is you must obey and carry out
10:49AM 21 and follow through with every reasonable directive given to
10:49AM 22 you by a representative of that office. Should you fail to do
10:49AM 23 so, that can result in your bail being revoked and your being
10:49AM 24 locked up and kept locked up until this matter is completed.
10:49AM 25 Do you understand?

10:49AM 1 THE DEFENDANT: Yes, Your Honor.

10:49AM 2 THE COURT: You are required to have a verifiable

10:49AM 3 residence that is approved by the United States Probation

10:49AM 4 Office, which residence also must be acclimated or suited for

10:50AM 5 electronic monitoring of the defendant. The Probation Office

10:50AM 6 will have the discretion as to the type of electronic

10:50AM 7 monitoring that is to be carried out or imposed, and the

10:50AM 8 probation office will be given a reasonable period of time

10:50AM 9 within which to do an evaluation of the residence that the

10:50AM 10 defendant will be staying at.

10:50AM 11 So, the defendant will not be released until that has been

10:50AM 12 completed; one, a verifiable residence established; and, two,

10:50AM 13 the inspection by the Probation Office of that residence. The

10:51AM 14 defendant's travel is hereby restricted to the Western

10:51AM 15 District of New York. That means you cannot travel outside of

10:51AM 16 the Western District of New York, which consists of 17

10:51AM 17 counties, and your attorney will advise you of what those

10:51AM 18 counties are.

10:51AM 19 If there becomes a need to travel outside of the Western

10:51AM 20 District, application and approval for such travel must first

10:51AM 21 be obtained from the US Probation Office before that travel

10:51AM 22 can be undertaken. And, as part of that process, the

10:51AM 23 defendant is obligated to fully disclose the purpose of the

10:52AM 24 travel, his complete itinerary and any other information the

10:52AM 25 probation officer requests of him in the context of that

10:52AM 1 travel. And such travel is not to be undertaken until actual
10:52AM 2 approval for same has been granted by the Probation Office or
10:52AM 3 by the Court.

10:52AM 4 As I previously indicated, but I will repeat, the
10:52AM 5 defendant is to obtain a verifiable residence that is approved
10:52AM 6 by the US Probation Office and to remain at that verifiable
10:52AM 7 residence while this matter is pending. That verifiable
10:52AM 8 residence will also be subject to an evaluation or inspection
10:52AM 9 by the Probation Office as to the feasibility of conducting
10:52AM 10 the electronic monitoring that I am about to order.

10:52AM 11 The defendant will be subject to electronic monitoring,
10:52AM 12 the form of which will be decided or in the discretion of the
10:52AM 13 US Probation Office, but it will be a 24-hour period of
10:53AM 14 monitoring. This is not to say the defendant is being
10:53AM 15 confined to the home or incarcerated in the home. It means he
10:53AM 16 will be subject, though, to monitoring on a 24-hour basis.

10:53AM 17 The defendant is to avoid all contact with any co-
10:53AM 18 defendants or defendants in related cases such as has been
10:53AM 19 extensively referred to, not only in this case by
10:53AM 20 incorporation, but in the case of *United States v. Ermin*, the
10:53AM 21 presently-pending cases involving the Pharaoh's Gentlemen's
10:53AM 22 Club, and the Defendant Gerace and the Defendant Bongiovanni
10:53AM 23 and other individuals.

10:53AM 24 Anything else, Probation Officer?

10:54AM 25 P.O. MCCRAY: No, Judge. Thank you.

10:54AM 1 THE COURT: Upon completion of the verifiable address
10:54AM 2 and approval of that address by the US Probation Office, both
10:54AM 3 as to the residence itself as well as to the efficacy for
10:54AM 4 electronic monitoring, and upon completion any additional
10:54AM 5 processing by either the US Marshal Service and/or the US
10:54AM 6 Probation Office, the defendant is to be released on bail
10:54AM 7 subject to all of the terms and conditions as I have stated
10:54AM 8 them to be.

10:54AM 9 Once again, Mr. Barnes, I want to advise you that you must
10:54AM 10 comply with all of those terms and conditions. Because, if
10:54AM 11 you fail to do so, a violation of any one of those terms and
10:54AM 12 conditions could result in your bail being revoked, and your
10:54AM 13 being locked up and kept locked up until this matter is
10:54AM 14 completed. Do you understand?

10:54AM 15 THE DEFENDANT: Yes, Your Honor.

10:54AM 16 THE COURT: Anything further at this time?

10:54AM 17 MR. COTTER: Not from the defense, Judge.

10:54AM 18 MR. COOPER: Judge, the government would make a few
10:54AM 19 requests for additional conditions at this time. First of
10:55AM 20 all, the government would request that the Court impose a
10:55AM 21 condition that the defendant have no contact with members of
10:55AM 22 the Outlaws Motorcycle Club.

10:55AM 23 THE COURT: I'm going to deny that. That's guilt by
10:55AM 24 association.

10:55AM 25 MR. COOPER: Judge, the government would request that

10:55AM 1 the defendant be prohibited from being inside of the Outlaws
10:55AM 2 Motorcycle Clubhouse where the firearm in this case was
10:55AM 3 recovered.

10:55AM 4 THE COURT: I am going to deny that.

10:55AM 5 MR. COOPER: The government would request that the
10:55AM 6 defendant not be permitted to be present at Pharaoh's
10:55AM 7 Gentlemen's Club.

10:55AM 8 THE COURT: I'm going to deny that. That's a public
10:55AM 9 place of business.

10:55AM 10 MR. COOPER: The government would request that the
10:55AM 11 defendant be prohibited from having weapons of any type, not
10:55AM 12 just firearms.

10:55AM 13 THE COURT: I've already imposed that.

10:55AM 14 MR. COOPER: Okay, Judge. And then, no contact with
10:55AM 15 members of the Rare Breed Motorcycle Club.

10:55AM 16 THE COURT: I'm going to deny that. That's guilt by
10:55AM 17 association.

10:55AM 18 MR. COOPER: All right. Thank you, Judge. And then,
10:55AM 19 the government would request the same 24-hour stay that we
10:55AM 20 requested with respect to Defendant Ermin.

10:55AM 21 THE COURT: That's granted. I presume it's going to
10:56AM 22 take longer than 24 hours for the arrangements of a verifiable
10:56AM 23 residence and for the evaluation and inspection by the
10:56AM 24 Probation Office.

10:56AM 25 MR. COOPER: Okay. So, that would be a stay until

10:56AM 1 Wednesday at 6 p.m.?

10:56AM 2 THE COURT: Correct.

10:56AM 3 MR. COOPER: Thank you, Your Honor. I have nothing

10:56AM 4 further.

10:56AM 5 THE COURT: All right. Thank you.

10:56AM 6 MR. COTTER: Thank you. Judge.

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CERTIFICATE OF TRANSCRIBER

In accordance with 28, USC, 753(b), I certify that this is
a true and correct record of the proceedings held in the
United States District Court for the Western District of New
York before Honorable Magistrate Judge H. Kenneth Schroeder,
Jr., on December 12th, 2023.

s/ Megan E. Pelka, RPR

Megan E. Pelka, RPR

Transcriber